Missouri Law Review

Volume 41
Issue 1 *Winter 1976*

Article 21

Winter 1976

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cumulated earnings tax can apply to publicly held corportions."[28] The holding of the court of appeals in *Golconda* has two significant features. First, there is an implicit rejection of any argument based on the "theoretically applicable" language found in the Senate report.[29] Second, it most likely draws the line between closely held and publicly held corporations at a limited group holding 50 percent or more of the stock.[30]

Regardless of what test is ultimately adhered to by the courts, the impact of *Golconda* will be primarily one of relief to publicly held corporations after two and one-half years of confusion following the Tax Court's decision. It also represents a retreat from the ever-increasing intrusion of revenue agents and federal judges into the policy-making role of corporate management.[31] *Golconda* gives superficial relief to publicly held corporations by holding the tax not applicable in this case, but its overall effect is to shift the emphasis to the criteria to be established in determining whether a corporation is publicly held. No matter what standard is adopted, it would seem that in the extreme case, such as that of a publicly held corporation deliberately availing itself to upper bracket shareholders with an announced policy of accumulating investment income, the court will find a way to impose the tax of section 531.[32]

R. MICHAEL BARON

WILLS – THE PRETERMITTED HEIR IN MISSOURI

Vogel v. Mercantile Trust Company National Association[1]

The will of a testatrix who died in 1921 devised the residue of her estate to a trustee to pay income to her only child for life, and then to distribute the trust property to the named only child of the life beneficiary. Two more children were born to the life beneficiary after the death of the testatrix. The life beneficiary died in 1970. His two younger children sued the trustee and their older sibling seeking intestate shares in the estate of the testatrix under the pretermitted heir statute in force in 1921.[2] The trial court sustained defendant's motion for summary

28. 58 T.C. at 158.
29. Although the court recognized that this was the basis of the Tax Court decision, it did not expressly reject this rationale. 507 F.2d at 595-96.
30. *Id.* at 597.
31. *See* Simons, *The Gathering Storm of Section 531 of Our Tax Law*, 44 TAXES 528, 529 (1966).
32. BITTKER & EUSTICE, *supra* note 4, ¶ 8.08, at 8-30. *See* Whitmore, *supra* note 7, at 233.

1. 511 S.W.2d 784 (Mo. 1974).
2. Section 514, RSMo 1919, provided:
If any person make his last will, and die, leaving a child or children, or descendants of such child or children in case of their death, not named or provided for in such will, although born after the making of such

judgment on the ground that testatrix's only child, the father of the plaintiffs, was named and provided for in the will. Thus, had testatrix died intestate, plaintiffs would still have received nothing because their father, who was then living, would have been the sole heir.[3]

The Missouri Supreme Court unanimously affirmed the judgment,[4] stating that the statutory provisions for a *child or children* and for *descendants of such child or children* in case of *their* death were made in the alternative, and the word "their" necessarily referred back to "child or children."[5] Thus, the provision for "descendants" did not become operational unless a child or children did not survive the testator. The plaintiffs tried to distinguish their case by the fact that their father only received the income for life and thus could not leave anything to his children, and by the fact that the fee estate did not vest in possession until his death. The court found no merit in this argument, saying "[w]e cannot see that this makes any difference."[6] The court cited *Lawnick v. Schultz*[7] for the proposition that any provision at all for the surviving child is sufficient to satisfy the requirements of the statute. A contrary holding would have meant that any descendant of a testator not provided for or expressly excluded by a will, even one born years after the testator's death, could demand the intestate share to which he would have been entitled had his parent not survived the testator.

The idea behind pretermitted heir statutes, that of preventing unintentional disinheritance, has a long history. Under Roman law, a person's children were entitled to a certain portion of their parents' estate called a *legitime*. In order to defeat the rights of children in his estate a testator was required to declare his intention expressly and name or designate clearly the one to be disinherited.[8] The law would not permit the intention to disinherit to be inferred from silence. A child left out could bring an action called *querela inofficiosi testamenti*, claiming

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will, or the death of the testator, every such testator, so far as shall regard any such child or children, or their descendants, not provided for, shall be deemed to die intestate; and such child or children, or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate.

The history of this statute and its subsequent amendment is discussed *infra*. Plaintiffs also relied on section 304, RSMo 1919, which provided for inheritance by posthumous descendants, contending that it brought them within the operation of section 514. The court dismissed this contention, saying that by definition a posthumous descendant is one conceived during the lifetime of the testator whereas the plaintiffs here were born years after the testatrix's death.

3. 511 S.W.2d at 786.

4. *Id.* at 790.

5. *Id.* at 787.

6. *Id.*

7. 325 Mo. 294, 28 S.W.2d 658 (En Banc 1930). A five dollar bequest to a daughter deceased at the execution of the will was held sufficient to exclude her children from the operation of the statute.

8. JUSTINIAN'S INSTITUTES, Lib. 2, Tit. 13.

unjust disinheritance, to have the will set aside.[9] Under modern civil law a system of forced heirs still restrains one's freedom of testation.[10] Certain heirs, generally the testator's parents and descendants, cannot be deprived of their allotted share of the testator's estate, except for certain defined reasons which must be set out expressly in the will, along with the name of the party to be disinherited.[11]

In early England a similar system of forced shares was enforced by the ecclesiastical courts with regard to personal property.[12] This practice began to die out in the fourteenth century,[13] but lasted until 1703 in York and 1724 in London, having been expressly preserved by the Statute of Distribution.[14] Before the Statute of Wills in 1540[15] no testamentary transfers of real property were allowed. After 1540 a tenant in fee simple could devise two-thirds of his land held by military tenure, and all land held by socage tenure. In 1660, when military tenure was converted into socage tenure, a testator had complete freedom of testation as to his real property.[16] Thus from the time of the Restoration, English law allowed a testator to cut off his heirs at law from succession to land by will for any reason or no reason at all.

Soon afterwards, however, the English courts established the doctrine of revocation of a will by implication of law from change of circumstance.[17] The earliest known case to enunciate this doctrine was *Overbury v. Overbury* in 1682,[18] where it was held that the birth of a child revoked a previously executed will bequeathing personal property. In this case it was expressly stated that the doctrine was based on the

9. JUSTINIAN'S INSTITUTES, Lib. 2, Tit. 18; 2 W. BLACKSTONE, COMMENTARIES *503. Cicero tells of a case where a father willed his estate to a stranger upon the mistaken belief that his son was dead. Upon petition the son was reinstated to his inheritance. CICERO, DE ORAT. Lib. 1, c. 38.

10. LA. CIV. CODE ANN. art. 1493-95 (West 1952).

11. *Id.* at art. 1617-21. The application of the civil law rule of forced heirs concerning disinheritance of descendants is illustrated by Walet v. Darby, 167 La. 1095, 120 So. 869 (1929).

12. H. SWINBURN ON TESTAMENTS AND WILLS, pt. 3, § 16. *See also* W.D. MACDONALD, FRAUD ON THE WIDOW'S SHARE (1960).

13. 2 W. BLACKSTONE, COMMENTARIES *493; Fratcher, *Toward Uniform Succession Legislation,* 41 N.Y.U.L. REV. 1037, 1051 (1966).

14. Statute of Distribution, 22 & 23 Car. 2, c. 10, § 4 (1670); W. BLACKSTONE, *supra* note 13, at *519.

15. 32 Hen. 8, c. 1 (1540). However, a tenant in fee simple could accomplish the same result by means of a feoffment to the use of the feoffor or to such uses as he might by will appoint or some similar use of the use device. *See* Fratcher, *Uses of Uses,* 34 MO. L. REV. 39, 52 (1969).

16. W. BLACKSTONE, *supra* note 13, at *12; Fratcher, *supra* note 15.

17. *See generally* Graunke and Beuscher, *The Doctrine of Implied Revocation of Wills by Reason of Change in Domestic Relations of the Testator,* 5 WIS. L. REV. 386, 387-94 (1930).

18. 2 Show. 242, 89 Eng. Rep. 915 (1682). "[I]f a man make his will and dispose of his personal estate amongst his relations and afterwards has children and dies . . . this is a revocation of his will." Graunke and Beuscher, *supra* note 17, at 389. *See* Note, *Wills--Revocation by Judicial Legislation,* 17 MICH. L. REV. 331, 335 (1918).

civil law *querela inofficiosum testamentum*.[19] In later cases this doctrine was clarified to require both the birth of issue and marriage subsequent to the will in question,[20] was extended to devises of land[21] and made posthumous children possible heirs.[22] Two theories were given for revocation in these cases: (1) to give effect to the assumed intent of the testator to revoke his will on such a drastic change in circumstances,[23] and (2) as a tacit condition annexed to the will itself, at the time it was made, that the testator did not intend that it should take effect if there should be a total change in the situation of his family.[24]

This is as far as the English doctrine progressed in the courts,[25] and the common law rule remained that birth of issue alone did not revoke the will of a man made subsequent to his marriage.[26] The reason given for this rule was that after marriage a man is presumed to contemplate the birth of issue and to take this into account when making his will.[27] The Wills Act of 1837 did away with the doctrine of revocation on marriage and birth of issue[28] and provided for revocation of a will by implication of law only upon a subsequent marriage.[29] This remained the state of the law in England until passage of the Inheritance (Family Provision) Act in 1938.[30]

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19. *See* notes 9-10 and accompanying text *supra*.
20. Lugg v. Lugg, 2 Salk. 592, 91 Eng. Rep. 497 (1689).
21. Brown v. Thoman, 1 Eq. Ca. Ab. 413, 21 Eng. Rep. 1142 (1701).
22. Christopher v. Christopher, 4 Bur. 2182, 98 Eng. Rep. 138 (1771).
23. Lugg v. Lugg, 2 Salk. 592, 91 Eng. Rep. 497 (1689).
24. Doe *ex dem.* Lancashire v. Lancashire, 5 T.R. 49, 101 Eng. Rep. 28 (1792).
25. *See* Johnston v. Johnston, 1 Phill. Ecc. 447, 161 Eng. Rep. 1039 (1817). Here the court admitted that there had been no previous case where birth of children alone or marriage alone had been sufficient to revoke a will. Nevertheless, referring to civil law, it seemed to say that birth of issue alone might be enough if accompanied by "other strong circumstances." *See* 4 J. KENT, COMMENTARIES ON AMERICAN LAW 524 (13th ed. 1884).
26. Easterlin v. Easterlin, 62 Fla. 468, 56 So. 688 (1911); W. PAGE, THE LAW OF WILLS § 514, at 943 (3d ed. 1941). The common law rule was enacted in Missouri by Section 7, at 1079, RSMo 1845 (superseded and repealed in 1955 by Section 474.240 RSMo 1969).
27. W. PAGE, note 26 *supra*.
28. 1 Vict., c. 26, § 19 (1837), provides: "No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances."
29. *Id.* at § 18. *See* Note, 17 MICH. L. REV. 331, 332 (1919).
30. 1 & 2 Geo. 6, c. 45, §1, provides in part:
Whereas, after the commencement of this Act, a person dies domiciled in England leaving—
a) a wife or husband;
b) a daughter who has not been married, or who is, by reason of some mental or physical disability, incapable of maintaining herself;
c) an infant son; or
d) a son who is, by reason of some mental or physical disability, incapable of maintaining himself; and leaving a will, then, if the court . . . is of the opinion that the will does not make reasonable provision for the maintenance . . . , the court may order that such reasonable provision as the court thinks fit shall . . . be made out of the testator's net estate for the maintenance of that dependent. . . .
The Intestates Estates Act, 15 & 16 Geo. 6 & 1 Eliz. 2, c. 64, § 7 (1952), extended the

In this country the common law rule that the birth of issue alone would not revoke a previous will was not well received because it frequently resulted in disinheriting after-born children whom the testator probably never meant to disinherit. Early in the history of the American colonies statutes were enacted to mitigate the consequences of the common law rule,[31] the earliest being enacted in Massachusetts in 1700.[32] These statutes generally provided that if the testator did not mention or provide for his children in his will, he was considered to die intestate as to those not mentioned. The origin of these statutes is unclear, because there was no English precedent for them. It may be that they were derived from the Roman law idea of *inofficiosum testamentum,* but they may have developed on their own from the same sense of parental obligation which inspired the Roman law.[33] Unlike the civil law system of forced heirs, the American pretermitted heir statutes are based upon a presumption that the omission of the child is unintentional and that the actual intention of the testator is not to disinherit his issue.[34]

The first Missouri pretermitted heir statute was enacted by the legislature of the Territory of Louisiana on July 4, 1807.[35] It was reenacted with no significant changes in language, by the legislature of the Territory of Missouri in 1815[36] and again by the General Assembly of the

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provision to intestates' estates. *See* Crane, *Family Provision On Death in English Law,* 35 N.Y.U.L. REV. 984 (1960).

31. KENT, *supra* note 25, at 526-27.

32. 1 ACTS AND RESOLVES OF THE PROVINCE OF MASSACHUSETTS BAY, Ch. 4, at 430 (1700), provides in part:

> That any child or children not having a legacy given them in the will of their father or mother, every such child shall have a proportion of the estate of their parents given and set out unto them as the law directs for the distribution of the estates of intestates.

33. *See* Dainow, *Inheritance by Pretermitted Children,* 32 ILL. L. REV. 1 (1937); Mathews, *Pretermitted Heirs: An Analysis of Statutes,* 29 COLUM. L. REV. 748 (1929); Touster, *Testamentary Freedom and Social Control—After-born Children,* 6 BUFFALO L. REV. 251 (1957). Dainow conjectures that the common law revocation upon marriage and birth of issue was changed by substituting the word "or" for "and" making it marriage or birth of issue. The next step was separation of birth of issue from marriage. GA. CODE § 113-408 (1933) is given as an example of the intermediate form. Dainow, *supra,* at 2.

34. McCourtney v. Mathes, 47 Mo. 533, 535 (1870); Guitar v. Gordon, 17 Mo. 408, 411 (1854); Block v. Block, 3 Mo. 594 (1834); Dainow, *supra* note 33, at 3; Mathews, *supra* note 32, at 749; Note, *The Establishment of the Rights of Pretermitted Children Born Prior to the Execution of a Will,* 16 IOWA L. REV. 244 (1930). For a summary of American pretermitted heir statutes as of 1960, see Rees, *American Wills Statutes,* 46 VA. L. REV. 856, 892-98 (1960).

35. Act of July 4, 1807, 1 TERR. LAWS, p. 132, § 22, provides in part:

> Where any person shall make his or her last will and testament and omits to mention the name of any child or children or afterwards shall marry or have a child or children not provided for in any such will, and die leaving a widow and child, or either widow or child, although such child be born after the death of its father, every such person, so far as shall regard the widow or such child or children, shall be deemed to die intestate. . . .

36. Act of Jan. 21, 1815, 1 TERR. LAWS, p. 405, § 28.

State of Missouri in 1821.[37] The origin of this statute is also unclear, but the French civil law influence might have provided part of the inspiration. Perhaps this explains why this early statute applied whenever a pretermitted heir was not "provided for," which implied the receipt of some beneficial interest, whereas later statutes[38] have required that the heir be "not mentioned." The pretermitted heir statute in force until 1955 was enacted in 1825 with substantially different wording but with the same meaning as the 1821 statute.[39] After *Block v. Block*[40] in 1834, in which it was questioned whether an express disinheritance was a "providing for" with the meaning of the statute, the General Assembly at its October term that same year amended the statute to read "not named or provided for" to make it clear that the child need not receive any positive benefit.[41]

The Missouri courts have given their statute a different interpretation from that of many other states, notably the "Massachusetts type" statute.[42] As early as 1857 the Missouri Supreme Court said in *Bradley v. Bradley*[43] that the Missouri statute, unlike the Massachusetts statute, does not take into account mistake or intentional omission; thus, if a child is not mentioned, the statute automatically operates.[44] In this respect the Missouri statute operates mechanically—*i.e.,* if children are not sufficiently mentioned in the will the statute applies no matter what other evidence shows that the testator in fact intended to disinherit the omitted child.[45] The severity of this rule was somewhat eased in later cases by the holding that the child need not be mentioned by name and that any reference which indicates that the omitted party was in the mind of the testator is sufficient to satisfy the statute.[46] The net effect

37. Act of Dec. 1, 1821, 1 TERR. LAWS, p. 787, § 4.
38. *See, e.g.,* MASS. GEN. LAWS ANN. c. 191, § 20 (1958).
39. Block v. Block, 3 Mo. 594, 597 (1834).
40. *Id.* This was the first recorded case to interpret this statute.
41. Bradley v. Bradley, 24 Mo. 311, 312 (1857).
42. The "Massachusetts type" statute is similar to Missouri's except that it contains the qualifying phrase "unless they have been provided for by the testator in his life time or unless it appears that the omission was intentional and not occasioned by accident or mistake." MASS. GEN. LAWS ANN. c. 191, § 20 (1958), *as amended,* (Supp. 1969). *See* 26A C.J.S. *Descent & Distribution,* § 45 at 590 (1956).
43. 24 Mo. 311 (1857).
44. Williamson v. Roberts, 187 S.W. 19 (Mo. 1916); Bradley v. Bradley, 24 Mo. 311, 312 (1857).
45. Goff v. Goff, 352 Mo. 809, 179 S.W.2d 707 (1944); Thomas v. Black, 113 Mo. 66, 20 S.W. 657 (1892); Bradley v. Bradley, 24 Mo. 311 (1857).
46. Zillig v. Patzer, 365 Mo. 787, 287 S.W.2d 771 (1956) ("Between all of you" held sufficient naming of children); Miller v. Aven, 327 Mo. 20, 34 S.W.2d 116 (En Banc 1930) ($5 to daughter who predeceased testatrix sufficient to prevent pretermission of her children); Ernshaw v. Smith, 2 S.W.2d 803 (Mo. 1928) (contingent remainder to grandchildren who survive life tenant sufficient providing for all grandchildren); Fitzsimmons v. Quinn, 282 S.W. 37 (Mo. 1926) (appointment as executor sufficient for son); Woods v. Drake, 135 Mo. 393, 37 S.W. 109 (1896) (naming four grandchildren satisfies statute as to their mother);

is that under a Massachusetts-type statute extrinsic evidence is admitted to show an intention to disinherit,[47] whereas in Missouri any evidence offered to rebut the presumption of inadvertent omission must appear within the four corners of the will.[48] Because of this, the Missouri statute has in many instances operated to defeat the true intention of the testator, in that the presumption that an omission of a child or descendant is unintentional may often be unsound. Thus, despite the assertions of the courts to the contrary,[49] it is a kind of ritual formalism that governs whether the testator's omitted heir can take, not the testator's true intention.

In 1955, as part of a major revision of Missouri's probate code, the previous pretermitted heir statute was repealed and replaced by section 474.240, RSMo 1969.[50] Although no reported decisions have yet interpreted this statute, it would appear to make three substantial changes in prior Missouri law as to pretermitted children. First, it expressly applies only to children born or adopted after the making of the testator's last will, while the previous statute applied to children born both prior

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Hockensmith v. Slusher, 26 Mo. 237 (1858) (bequest to son-in-law sufficient for daughter); Beck v. Metz, 25 Mo. 70 (1857) ("children" sufficient for daughter). In *Hockensmith* the court set out the general rule:

> [W]henever the mention of one person, by a natural association of ideas, suggests another, it may reasonably be inferred that the latter was in the mind of the testator and was not forgotten or unintentionally omitted.

Hockensmith v. Slusher, *supra*, at 240.

47. White v. White, 322 Mass. 30, 76 N.E.2d 15 (1947); Buckley v. Gerard, 123 Mass. 8 (1877); Wilson v. Fosket, 6 Met. (Mass.) 400 (1843); W. PAGE, THE LAW OF WILLS § 530 at 992 (3d ed. 1941); King, *Statutory Status of Pretermitted Heirs*, 13 BOSTON U. L. REV. 672 (1933); Annot., 94 A.L.R. 26, 209 (1935).

48. Goff v. Goff, 352 Mo. 809, 179 S.W.2d 707 (1944); Conrad v. Conrad, 280 S.W. 707 (Mo. 1926); Pounds v. Dale, 48 Mo. 270 (1871); Batley v. Batley, 239 Mo. App. 664, 193 S.W.2d 64 (K.C. Ct. App. 1946); W. PAGE, note 47 *supra*, § 530 at 990; Annot., 94 A.L.R. 26, 211 (1935).

49. Guitar v. Gordon, 17 Mo. 408 (1853); Block v. Block, 3 Mo. 594 (1834). In *Block* the court said: "The true intent of the testator is to govern all things and where it is clear it must prevail." *Id.* at 596.

50. Section 474.240, RSMo 1969, corresponds to section 41 of The Model Probate Code and provides:

> 1. When a testator fails in his will to mention or provide for any of his children born or adopted after the making of his last will, such child, whether born before or after the testator's death, shall receive a share in the estate of the testator equal in value to that which he would have received if the testator had died intestate, unless it appears from the will that such omission was intentional, or unless when the will was executed the testator had one or more children known to him to be living and devised substantially all his estate to his surviving spouse.
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> 2. If, at the time of the making of his will, the testator believes that any of his children are dead, and fails to provide for such child in his will, the child shall receive a share in the estate of the testator equal in value to that which he would have received if the testator had died intestate, unless it appears from the will or from other evidence that the testator would not have devised anything to such child had he known that the child was alive.

to and after the making of the will.[51] This change recognizes the fact that it is highly unlikely that a parent would inadvertently omit a child who was alive when the will was made. Section 474.240(2) makes an exception where the testator believed, at the time of the execution of the will, that a child born prior to the will was dead, unless it appears that the omitted child would have taken nothing anyway. Second, the statute is inapplicable to after-born children if the testator had one or more children living at the time the will was executed and devised substantially all of his estate to his spouse.[52] Third, and most significant with respect to the question raised in *Vogel,* no provision is made for omitted grandchildren or more remote issue.[53]

The *Uniform Probate Code* was promulgated for adoption in August 1969 by the National Conference of Commissioners on Uniform State Laws in cooperation with the American Bar Association Section of Real Property, Probate and Trust Law.[54] In late 1972 the Subcommittee for Revision of Missouri Probate Laws was appointed by the Missouri Bar Committee on Probate and Trusts and in subsequent meetings the Subcommittee decided that instead of seeking enactment of the *Uniform Probate Code* in Missouri, it would use it as a drafting model for a bill amending specific portions of the Missouri Probate Code of 1955.[55] The Draft of the 1976 amendments to the Missouri Probate Code of 1955, 1 October 1975, which has been approved by the Probate and Trusts Committee and the Board of Governors of The Missouri Bar, would make several changes affecting the status of the pretermitted heir in Missouri. Section 474.010 would be amended to conform to section 2-102 of the *Uniform Probate Code,*[56] which gives the surviving spouse the first $50,000 of the estate plus half of the remainder where there is no issue by another spouse. Thus in most estates there would be no intestate share left about which omitted children could dispute. Amended section 474.060 would conform to section 2-109 of the *Uniform Probate Code,*[57] making illegitimates children of their father as well as of their

51. § 514, RSMo 1919. *See, e.g.,* Goff v. Goff, 352 Mo. 809, 179 S.W.2d 707 (1944); Thomas v. Black, 113 Mo. 66, 20 S.W. 657 (1892); Block v. Block, 3 Mo. 594 (1834).

52. *See* Editorial Comment, 26 V.A.M.S. 558 (1956).

53. For other articles concerning the pretermitted heir in Missouri, see Elbert, *Advancements and the Right of Retainer in Missouri,* 18 Mo. L. REV. 249, 258 (1953); Fratcher, *Trusts and Succession in Missouri,* 23 Mo. L. REV. 467 (1958); Lewis, *Adoption—Descent and Distribution—Right of Adopted Child to Take from Natural Parent Under Pretermitted Heir Statute,* 19 Mo. L. REV. 86 (1954).

54. To date eleven states have enacted the *Uniform Probate Code:* Alaska, Arizona, Colorado, Florida, Idaho, Minnesota, Montana, Nebraska, New Mexico, North Dakota and South Dakota. UNIFORM PROBATE CODE, 8 U.L.A. 54 (Master Ed., 1975 Supp.).

55. *Proposed 1975 Amendments to the Missouri Probate Code of 1955,* 30 J. Mo. B. 500 (1974).

56. UNIFORM PROBATE CODE, § 2-102, 8 U.L.A. 323 (Master Ed. 1972).

57. *Id.* at § 2-109.

mother for purposes of intestate succession if paternity is established and the father had treated the child as his during his life. This would allow a new group of people to claim an intestate share as a pretermitted heir. Finally, the Draft of 1 October 1975 would substitute section 2-302 of the *Uniform Probate Code*[58] for present section 474.240. This amendment would deprive children who would otherwise come within the statute of an intestate share if the testator devises substantially all of his estate to their "other parent" rather than his "surviving spouse," as the 1955 Code reads. Also, a new exception is added to the operation of the statute where the testator has provided for the child outside of the will.[59]

The net effect of the 1955 Code is to make the pretermitted heir statute a vehicle for furthering a testator's probable intent rather than a trap to thwart the intention of the unwary. An attempt is made to balance the societal values of parental duty and familial obligation which call for the protection of children from disinheritance[60] with the common law idea of freedom of testation. Section 474.240 is an indication that the ideal of freedom of testation is becoming predominant,[61] at least where disinheritance of descendants of the testator is concerned. The amendments proposed by The Missour Bar would seem to be a continuation of this trend.

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58. *Id.* at § 2-302.

59. On October 18, 1975 the Board of Governors unanimously approved the Draft of 1 October 1975 and recommended it for enactment by the General Assembly.

60. *See* Fratcher, *Protection of the Family Against Disinheritance in American Law,* 14 INT'L & COMP. L. Q. 293 (1965); Note, *Limitations on Testamentary Power in Missouri: Protection of the Spouse and Children of the Testator,* 1954 WASH. U.L.Q. 354. In the latter article the author advocates changing the pretermitted heir statute so as to give a minor child of the testator absolute protection against disinheritance.

61. This is just the opposite trend to that predicted by Dainow, *supra* note 33, at 11.